IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.MC.No. 5583 of 2003(C)

CC.78/2003 of JUDL. MAGISTRATE OF FIRST CLASS COURT-III, TRIVANDRUM

.....

PETITIONER: ACCUSED 1 & 2:

---

1. K.K.JOSHWA (WRITTEN AS P.K.K.JOSHWA IN THE COMPLAINT) NOW WORKING AS SUPDT.OF POLICE, VIGILANCE AND ANTI CORRUPTION BUREAU, THIRUVANANTHAPURAM.

2. RAMESH KUMAR, NOW WORKING AS DEPUTY SUPDT. OF POLICE, RAILWAYS, PALAKKAD.

BY ADV. SRI.K.GOPALAKRISHNA KURUP

RESPONDENTS: COMPLAINANT:

---

1. CHANDRIKA, T.C.42/1048, PUTHUVEL PUTHANVEEDU, ROSELANE, VALLAKADAVU P.O., THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

BY ADV. SRI.S.RAJEEV.
R2 BY PUBLIC PROSECUTOR MR. C.K. SURESH

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.A.NO.13426 OF 2003 IN CRL.M.C.NO. 5583 OF 2003

DISMISSED.

25-10-2007 SD/-K.R.UDAYABHANU, JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

==========

CRL.M.C.NO. 5583 OF 2003

==========

DATED THIS THE 25TH OCTOBER 2007

ORDER

The petitioners are accused 1 and 2, police officials who have sought for getting quashed the proceedings initiated on the basis of the private complaint vide C.C.No.78/2003 in the court of the Judicial Magistrate of Ist Class-III, Thiruvananthapuram with respect to the offences under Sections 341, 342 and 343 read with Section 34 of the Indian Penal Code. The contention is that the cognizance taken by the court below without obtaining sanction under Section 197 Cr.P.C.cannot be sustained. It is submitted that the matter is with respect to as the protest march on 12-7-2000 by the Akhila Bharatheeya Vidyarthi Parishad that turned violent and certain persons were injured and one person died. Consequently Crime No.261/2000 of Fort Police station and Crime No.145/2000 of Thampanoor police station were registered. As per order dated 15-7-2000 by the Director General of Police, the petitioners were entrusted with the investigation of both cases and the investigation was taken over on 17-7-2000. The first petitioner was the then Deputy Superintendent of

Police and the 2nd petitioner was the Circle Inspector. It was revealed during investigation that Ajikumar alias milk Ani, S/o. Thankappan Nair whose mother has instituted the proceedings that is sought to be quashed, is involved in the above commission of offence. Final report was filed under Sections 120B, 143,147,148,149,447,324,427,506, 302, 109 I.P.C and Section 3(2)(e) of the Prevention of Damage to Public Property Act, 1984. The son of the complainant Ajikumar was accused No.20. He was also accused No.36 in Crime No.145/2000 of Thampanoor police station. During the course of investigation, Ajikumar was arrested on 17-9-2000 at about 7.30 p.m. and produced before the Magistrate at 5 p.m. on 18-9-2000 and remanded to judicial custody. Annexure-I is the copy of the complaint filed by the mother of the above person which was taken cognizance of. It is the contention that the prosecution case against the petitioners cannot be sustained as they have arrested the accused only in performance of their official duty and hence Section 197 Cr.P.C. sanction is mandatory.

2. Annexure-I is the copy of the complaint which was taken cognizance of by the court below wherein it is alleged that son of the complainant was taken into custody by the accused persons in the

evening at Muttuthara Junction and one Anil Kumar is the witness of the same and on 16-9-2000 in the morning a plain cloth policeman came to the residence of the complainant and got the complainant and her son-in-law sign certain blank papers under threat. It is alleged that the complainant's son was kept in custody for more than 24 hours without producing before the court and the above attracted the offences under Sections 341,342 and 343 read with Section 34 I.P.C. Counsel for the petitioners herein has produced the common judgment of the Additional District & Sessions Judge(Fast Track Court-I), Thiruvananthapuram in S.C.Nos.302/2001, 1786/2001 & 1313/2002. As pointed out it is seen that the son of the complainant is accused No.20 in S.C.No.302/2001. The offences involved are under Section 302 I.P.C. as well as Section 3(2) of the P.D.P.P.ACT are included. Annexure-IV is the common judgment dated 15-2-2006. Annexure-V is the report filed by the first petitioner/Deputy Superintendent, before the Judicial First Class Magistrate, Thiruvananthapuram dated 22-7-2000 in Crime No. 261/2000 incorporating the name of the son of the complainant also as an accused. Annexure-VI is another report filed by the first petitioner before the Judicial First Class Magistrate, Thiruvananthapuram wherein

the detailed address of the complainant including the son of the complainant is mentioned. The same is dated 9-8-2000. Annexure-VII is the remand report of the son of the complainant wherein the endorsement of the Judicial First Class Magistrate is seen which is dated 18-9-2000 that 20th accused one Milk Ani @ Ajikumar aged 30 arrested and produced before him at 5 p.m. and there was no complaint of ill-treatment by the police. He was remanded to Central Jail, Thiruvananthapuram till 22-9-2000.

3. The counsel for the petitioner relied on the decision reported in **Sankaran Moitra v. Sadhna Das, (2006)4 S.C.C.584** wherein the Supreme Court has considered the existing case law on the point and clarified that Section 197 Cr.P.C. is attracted if the offences alleged are committed if the alleged act was done in the performance of duty or in the purported performance of duty. It was pointed out that ill-treatment, beating up etc. would still be offences even if committed during the course of performance of duty, but it would attract Section 197 Cr.P.C. The apex court has gone to the extent that even a person is killed by use of excessive force, if it was done in the performance of duty or in the purported performance of duty, Section 197 Cr.P.C. cannot be bypassed.

4. In the instance case, I find that as per Anenxure-V report dated 22-7-2000 and subsequently as per Annexure-VI report dated 9-8-2000, the son of the complainant was incorporated as an accused. As per Annexure-VII remand report he was taken into custody on 17-9-2000 and produced before the Magistrate on 18-9-2000. It is the contention of the complainant that her son was arrested on 15-9-2000 and hence if he has been kept in custody beyond 24 hours, the same would attract the offences alleged . But still going by the ratio laid down by the Supreme Court in **Sankaran Moitra's case (op.cit)** sanction under Section 197 Cr.P.C.would be required to prosecute the officials involved. I find that the observations of the Supreme Court in **Unnikrishnan v.Alikutty, 2000(3)K.L.T.483(SC)** is to the effect that a policeman keeping a person in the lock-up for more than 24 hours without authority is not merely abusing his duty but his act would be quite outside the contours of his duty or authority and that he cannot claim that such act was done in exercise of his official duty. I find that the above observations were made in appeal and hence it is not relevant as the question herein is only whether Section 197 Cr.P.C.is attracted or not. In view of the three member Bench decision of the Supreme Court in **Sankaran Moitra's case**

(op.cit) sanction under Section 197 Cr.P.C. would be required. Hence the proceedings pending before the Judicial First Class Magistrate Court-III, Thiruvananthpauram in which the petitioners are the accused are herewith quashed. It is made clear that it would be open to the respondents to initiate appropriate proceedings permissible by law in the matter. The criminal miscellaneous case is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

ks.

K.R.UDAYABHANU, J

CRL.M.C.NO. 5583 OF 2003

ORDER

25-10-2007

K.R.UDAYABHANU, J

W.P.(C)NO.24298/2006
W.P.C.NO. 1073/2007 &
C.O.C. NO. 529 OF 2007

JUDGMENT

22-10-2007